Supreme Court, U.S.
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No. 94-1363
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In The

Supreme Court of the United States

October Term, 1994

RICHARD ANDERSON; ROBERT EGGAN; CARL ENGLEHORN; NORRIS NIELSEN; TIMOTHY WANDERSEE; DONALD WOODS; PETER LOWRY,

Cross-Petitioners,

vs.

UNISYS CORPORATION, doing business as REMINGTON RAND UNIVAC, doing business as SPERRY UNIVAC, doing business as SPERRY, doing business as UNISYS, doing business as PARAMAX SYSTEMS,

Cross-Respondent.

Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should claimants who filed ADEA administrative charges be barred from joining a representative or joint action when claimants who had not filed administrative charges are legally allowed to join.

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT

The parties to the proceeding below are those listed in the caption on the cover of this petition.

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I. Review is requested because the Eighth Circuit's decision establishes a new precedent that undermines well established law on the "single filing rule", has the bizarre result of excluding claimants who file administrative charges from joint or class actions but including claimants who do not, and conflicts with and unduly complicates the Supreme Court's policy goals in its class actions rulings. 15

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No. 94-1363

Supreme Court of the United States

October Term, 1994

RICHARD ANDERSON; ROBERT EGGAN; CARL ENGLEHORN; NORRIS NIELSEN; TIMOTHY WANDERSEE; DONALD WOODS; PETER LOWRY,

Cross-Petitioners,

vs.

UNISYS CORPORATION, doing business as REMINGTON RAND UNIVAC, doing business as SPERRY UNIVAC, doing business as SPERRY, doing business as UNISYS, doing business as PARAMAX SYSTEMS,

Cross-Respondent.

Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

CROSS-PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Respondents Eggan, Englehorn, Wandersee, Woods and Lowry ("non-Anderson/Nielsen Respondents") seek review of that part of the Eighth Circuit Court of Appeals' decision which affirms the district court's October 20, 1993, order. The Eighth Circuit's decision was issued on February 14, 1995, is reported at

47 F.3d 302 and reprinted in the Appendix ("A") to Petitioner's Writ at A, 5-22. The non-Anderson/Nielsen Respondents also seek review of the Eighth Circuit's April 19, 1995 denial of the non-Anderson/Nielsen Respondents' motion for a rehearing. The April 19, 1995, order is unreported and reprinted in the Appendix to Petitioner's Writ at A, 1-4.

Originally, the non-Anderson/Nielsen Respondents were specifically given permission to join in this action in an opinion of the district court issued on March 25, 1993. It is unreported and reprinted in the Appendix ("B") to Respondents' Brief in Opposition to a Writ of Certiorari at B, 4a-21a. The opinion of the district court granting Petitioner's motion to dismiss the federal claims of the non-Anderson/Nielsen Respondents and the state claims of all of the Respondents was issued on October 20, 1993. It is unreported and reprinted in the Appendix to Petitioner's Writ at A, 47-60. The order of the district court denying the non-Anderson/Nielsen Respondents' motion to reconsider their dismissal was issued on November 24, 1993. It is unreported and reprinted in the Appendix ("A") to Respondents' Writ at A, 1a-2a. The district court's denial of Petitioner's first motion for summary judgment is attached in the Appendix to Respondents' Brief in Opposition to a Writ of Certiorari at C, 22a-23a. The district court's opinion granting Petitioner's second motion for summary judgment was issued on December 28, 1993. It is unreported and reprinted in the Appendix to Petitioner's Writ at A, 23-46.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is appropriate and was invoked by Petitioner with its Petition for a Writ of Certiorari under 28 U.S.C. § 1254(1). Under 28 U.S.C. § 2101(c), the writ must be applied for within ninety days after the entry of judgment or decree. The 90 day period commences from the date of a denial of a petition for rehearing. The non-Anderson/Nielsen Respondents'

petition for a rehearing was denied on April 19, 1995. The 90 day period expired on July 19, 1995. Respondents received Petitioner's Petition for a Writ of Certiorari on July 18, 1995. Under Rule 12.3 of the Rules of the Supreme Court of the United States, a cross Petition must be filed within 30 days of the Respondents' receipt of Petitioner's Petition.

RELEVANT STATUTES AND RULES INVOLVED

29 U.S.C. § 626(d):

> No civil action may be commenced by an individual under this section until 60 days after a charge of discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed —
>
> * * *
>
> (2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

29 U.S.C. § 626(e) (1) before its amendment by P.L. 102-166, Title I, § 115 Stat. 1079 on November 21, 1991:

> (1) Statute of limitations; reliance in future on administrative rulings, etc.; tolling. Sections 6 and 10 of the Portal-to-Portal Act of 1947 (29 USCS §§ 255 and 259) shall apply to actions under this Act.

29 U.S.C. § 255(a):

> (I)f the cause of action accrues on or after the date of the enactment of this Act (May 14, 1947) — (it) may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.

29 U.S.C. § 626(e):

> Statute of limitations; reliance in future on administrative rulings, etc.; tolling:
>
> Section 10 of the Portal-to-Portal Act of 1947 (29 USCS § 259) shall apply to actions under this Act. If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) (29 USCS § 630(a)) against the respondent named in the charge within 90 days after the date of the receipt of such notice.

Fed. R. Civ. P. Rule 3: Commencement of Action.

> A civil action is commenced by filing a complaint with the Court.

Fed. R. Civ. P. Rule 4(m): Time Limit for Service.

> If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

Fed. R. Civ. P. Rule 15c: Relation Back of Amendments.

> An Amendment of a pleading relates back to the date of the original pleading when
>
> > (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
> >
> > (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
> >
> > (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied

> and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew of should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.
>
> The deliver or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

Fed. R. Civ. P. Rule 54(b): Judgment Upon Multiple Claims or Involving Multiple Parties.

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all

> of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to review at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

STATEMENT OF THE CASE

This is an age discrimination action in which Respondents sought relief under the Minnesota Human Rights Act (MHRA) and the federal Age Discrimination in Employment Act (ADEA).

Petitioner Unisys Corporation has filed a Petition for a Writ of Certiorari. The non-Anderson/Nielsen Respondents have Cross Petitioned for a Writ of Certiorari.

The result of the Eighth Circuit's decision, which allows a claimant who never filed ADEA administrative charges to join this action in accordance with well established and widely adopted law, but excludes other claimants, who did file administrative charges and gave Petitioner early and full notice of their claims, is bizarre and ironic.

This action is an unfortunate example of the procedural morass into which federal discrimination actions often descend.

FACTUAL BACKGROUND

A. Involuntary Terminations

All five non-Anderson/Nielsen Respondents were employed for many years by Petitioner in its Software Engineering Department. They were all selected for termination at the same management meeting. Three were told they were laid off on April 2, 1990. Petitioner delayed informing the fourth non-Anderson/ Nielsen Respondent of his discharge, Donald Woods, until June 18, 1990.

Every Respondent was told by Petitioner that he was laid off in a "reduction in force." However, evidence uncovered during discovery showed that the number of regular employees and contract employees in the Department actually increased after the "reduction in force."

B. Administrative Proceedings

The non-Anderson/Nielsen Respondents consulted with an attorney on charge filing procedures several months after their termination. They all filed their administrative age discrimination charges with the Minnesota Department of Human Rights (MDHR), a deferral agency of the EEOC, within one year of their discharge.

A pro se age discrimination charge was also filed by Respondent Anderson, who had not consulted an attorney.

Four additional employees of Petitioner, terminated during the same layoff from other Departments of Petitioner's Electronic and Information Systems Group (EISG), (to which the Software Engineering Department belonged), also filed age discrimination charges. Pursuant to its role as a deferral agency, the MDHR notified the EEOC of the charges of all of Petitioner's

ex-employees, including the Respondents', who had filed charges.

Petitioner, in its defense to these charges, repeated the claim, which evidence later showed was untrue, that Respondents were discharged in a "reduction of force."

Petitioner additionally in its defense provided to the MDHR data purporting to show that its layoffs had no disproportionate impact on its older workers. At that time, Respondents challenged Petitioner's claim of no disproportionate impact, but did not have their own independent data.

However, after he commenced his legal action, Respondent Anderson received data from Petitioner that was strikingly different. This data showed that *87%* of the employees involuntarily laid off from the Software Engineering Department in 1990 were over the age of 40, even though only *40%* of the employees in the Department were over the age of 40. The data at first glance also seemed to show that age was a factor in the layoffs by the other Departments in EISG as well.

The MDHR cited as facts both of Petitioner's misrepresentations when it dismissed the claims of the six Respondents who had filed administrative charges.

The non-Anderson/Nielsen Respondents consulted with Attorney O'Brien after their administrative charges were dismissed. They did not commence their own legal action after these dismissals.

Respondent Anderson did. On February 10, 1992, he filed a pro se Complaint in federal court. The pro se Complaint specifically alleged that the age mix of Petitioner's employees who were terminated in the layoff was substantially greater than

the age mix of Petitioner's employees as a whole, and that Petitioner had engaged in the practice of terminating older employees under the pretext of creating new organizational groups.

Respondent Anderson then obtained legal counsel for the first time. With the assistance of this attorney, in June of 1992 Respondent Anderson filed an Amended Complaint. The Amended Complaint specifically stated the action was commenced to assert the rights of additional, similarly situated former employees. Both the Amended Complaint and the pro se Complaint were served on Petitioner on June 9, 1992, 119 days following the filing of the pro se Complaint.

C. Motion for Class Certification

On December 9, 1992, Respondent Anderson moved the court to certify a class consisting of employees of Petitioner's Software Engineering Department who were terminated in 1990.

For this motion Respondent Anderson personally had analyzed the voluminous data on the layoff that Petitioner had supplied during discovery. Respondent Anderson is a mathematician. He has a B.A., magna cum laude, with a major in mathematics, did graduate work in mathematics at the University of Minnesota, and worked as a mathematician for Petitioner.

At first, the data appeared to show that the layoff disproportionately impacted all of EISG's older employees. There was only a .5% probability that the particular age mix in the layoff was random and not related to age. However, Respondent Anderson discovered that the numbers from Petitioner's Software Engineering Department contaminated the overall EISG figures.

The statistical proof of age discrimination in the Software Engineering Department was particularly strong. The probability that the age mix in the layoff from the Department was random, and not related to age, was about .02%. If Software Engineering Department's data was subtracted from EISG's data, the probability that the selection by the other Departments of whom to lay off was random, and not related to age, rose above the 5% probability standard Respondent Anderson believed was needed for statistical validity.

On March 25, 1993, the district court, though it denied Respondent Anderson's request for class certification on the grounds that the requested class was not sufficiently numerous, ruled additional employees laid off in 1990 from the Software Engineering Department could piggyback on Respondent Anderson's claim and join this action. The non-Anderson/ Nielsen Respondents, who had filed administrative charges, along with Respondent Nielsen, who had not, joined this action in June of 1993 .

D. Motion to Dismiss the Non-Anderson/Nielsen Respondents

On July 28, 1993, Petitioner moved for the dismissal of the non-Anderson/Nielsen Respondents. Petitioner did not move for the dismissal of the ADEA claims of Respondent Nielsen. The district court granted this motion on October 20, 1993, but did not enter an appealable judgment or order.

In this motion Petitioner had argued, and the district court agreed, that the non-Anderson/Nielsen Respondents, who had filed administrative charges with the assistance of counsel, had to be dismissed, if the litigation statute of limitations had run, because they were represented by an attorney at the time they made their decisions not to proceed with their own individual

actions. Petitioner argued that the ADEA litigation statute of limitations had run because a 1991 amendment to the ADEA, whose application to this action shortened the litigation limitations period, retroactively applied to the non-Anderson/ Nielsen Respondents' claims. The only Respondent other than Anderson who was allowed to remain, Respondent Nielsen, had never filed an administrative charge.

After the motion to dismiss was granted, the non-Anderson/ Nielsen Respondents immediately moved the district court to reconsider its dismissal of their claims. In this motion, the non-Anderson/Nielsen Respondents specifically argued that the 1991 amendment to the ADEA litigation statute of limitations was not retroactive. The motion to reconsider this dismissal was denied by an order dated November 24, 1993.

The district court subsequently incorporated large portions of its initial October 20, 1993, order in its December 28, 1993, order entering judgment against all Respondents. However, the district court did not amend the portions so incorporated to reflect the fact that the non-Anderson/Nielsen Respondents had raised the retroactivity issue.

The December 28, 1993, order was an order for judgment and, thus, appealable. All Respondents timely appealed the district court's judgment to the Eighth Circuit Court of Appeals.

E. Appeal to the Eighth Circuit

In its February 14, 1995, decision, the Eighth Circuit partially reversed the district court and restored the ADEA claims of two of the Respondents, Richard Anderson and Norris Nielsen.

The Court of Appeals affirmed the district court's dismissal of the non-Anderson/Nielsen Plaintiffs.

The Eighth Circuit conceded that it was odd to allow Respondent Nielsen, who had never filed administrative charges, to remain in the action, while the non-Anderson/Nielsen Respondents, who had, could not.

> It is somewhat ironic * * * that Nielsen, who did not even file an administrative charge, is permitted to continue in this action while the others have been dismissed, and we believe that result requires a brief explanation. As we already indicated, * * * (T)he Civil Rights Act of 1991 altered that statute of limitations in ADEA cases. * * * The new statute of limitations is ninety days from the receipt of a right-to-sue letter from the EEOC. 29 U.S.C. sec. 626(e) (Supp. 1993). Nielsen never received a right-to-letter because he did not file an administrative charge.

The alteration to the ADEA statute of limitations that the Court of Appeals referred to changed the ADEA litigation limitations periods from 2 years / 3 years if willful to 90 days after the receipt of an EEOC right-to-sue letter. P.L. 102-166, Title I, § 115, 105 Stat. 1079. The amendment was adopted by Congress on November 21, 1991. However, all of the non-Anderson/ Nielsen Respondents were dismissed in 1990 and filed their charges in 1991 prior to the amendment.

Respondents Eggan, Englehorn and Lowry received their dismissal letters from the EEOC in October of 1991, before the amendment's adoption. They were told by the EEOC that the statute of limitations was 2 years / 3 years if willful.

Respondents Wandersee's and Woods' EEOC letters were dated January 31, 1992, shortly after the amendment was adopted. Nonetheless, the EEOC dismissal letters also told these

two Respondents that the limitations periods were 2 years / 3 years if willful.

Moreover, it is clear that on June 9, 1992, when Respondent Anderson's pro se Complaint and Amended Complaint was served, Petitioner also did not believe the new, shorter ADEA limitations period applied.

Petitioner continued to believe that the old limitations period was in effect, at least into early 1993. It argued when it opposed in 1992 Respondent Anderson's motion for class certification, that the 2 years / 3 years if willful limitations period applied, that the old statute of limitations barred the claims of the non-Anderson/ Nielsen Respondents, and that these Respondents therefore could not join this action. The district court disagreed, allowing the non-Anderson/Nielsen Respondents, by name, to enter the action in its March 25, 1993 order.

F. Petition for Rehearing

In their Petition for Rehearing, the non-Anderson/Nielsen Respondents contended that the Court of Appeals misconstrued the record on two material issues.

The Court of Appeals erroneously held, in footnote 14 of its first decision, that it could not consider the non-Anderson/ Nielsen Respondents' argument on appeal, that the amendment to the ADEA statute of limitations was not retroactive.

The Court of Appeals had also incorrectly concluded in its first opinion that Respondent Anderson's initial pro se Complaint was never served. The non-Anderson/Nielsen Respondents had indicated that the pro se Complaint had been served in their Appeal Briefs, but submitted more of the record in the Petition for Rehearing to confirm that representation.

The Petition for Rehearing was denied, however.

REASONS FOR GRANTING THE WRIT

I.

REVIEW IS REQUESTED BECAUSE THE EIGHTH CIRCUIT'S DECISION ESTABLISHES A NEW PRECEDENT THAT UNDERMINES WELL ESTABLISHED LAW ON THE "SINGLE FILING RULE", HAS THE BIZARRE RESULT OF EXCLUDING CLAIMANTS WHO FILE ADMINISTRATIVE CHARGES FROM JOINT OR CLASS ACTIONS BUT INCLUDING CLAIMANTS WHO DO NOT, AND CONFLICTS WITH AND UNDULY COMPLICATES THE SUPREME COURT'S POLICY GOALS IN ITS CLASS ACTIONS RULINGS.

Compelling reasons explain why Petitioner did not include Respondent Nielsen, the only Respondent in this action who did not file an administrative charge, in its motion to dismiss the ADEA claims of the non-Anderson/Nielsen Respondents. It is clear, under a well established and widely accepted legal principle, that claimants who did not file timely administrative charges can join actions commenced by another claimant who did.

This legal principle is often referred to as the "single filing rule." It has been applied by most, if not all, of the Courts of Appeals in ADEA actions. *See e.g., Anderson v. Montgomery Ward & Co.*, 852 F.2d 1008, 1016 (7th Cir. 1988); *Kloos v. Carter-Day Company*, 799 F.2d 397 (8th Cir. 1986); *Mistretta v. Sandia Corporation*, 639 F.2d 588 (10th Cir. 1980); *Bean v. Croker National Bank*, 600 F.2d 754 (9th Cir. 1979).

The "single filing rule," which has been applied in other types of discrimination cases besides age discrimination cases, is

well grounded in Supreme Court precedents. In *Zirpes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982) the Court held that filing of a timely EEOC charge was not a jurisdictional prerequisite for a claimant to participate in a Title VII class action. In *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976), the Court held that class members who had not filed administrative charges under the provisions of Title VII were still entitled to class-based relief.

The Eighth Circuit's decision on this issue, if allowed to stand, would have the ironic consequence of penalizing the more deserving claimants in class and joint actions.

Litigation statutes of limitations are tolled during the pendency of a class action for *all* putative class members while the class action is pending, *American Pipe and Construction Co. v. Utah*, 414 U.S. 538 (1974), even if class certification is eventually denied because it cannot be shown that "the class is so numerous that joinder of all members is impracticable" (as it was in this case). *Chardon v. Fumero Soto*, 462 U.S. 650 (1983).

In *American Pipe*, the Court was emphatic that the claims of *all* putative class members were preserved, with no exceptions:

> Not until the existence and limits of the class have been established * * * does a class member have any duty to take note of the suit * * * (E)ven as to asserted class members who were unaware of the proceedings * * * or who demonstrably did not rely on the institution of those proceedings, the later running of the applicable statute of limitations does not bar participation in the class action * * *

Surely, if the statute of limitations does not eliminate the claims of putative class members who are unaware that they might have a claim, as *American Pipe* holds, it should not eliminate the legal claims of the non-Anderson/Nielsen Respondents. Employers, when challenging tolling, often argue that they had no notice of, and could not preserve evidence on, the allegations of the additional claimants who did not initially file charges. Here, the non-Anderson/Nielsen Respondents did place Petitioner on notice and gave it a chance to locate and preserve its evidence.

If it is not reversed, the unintended message of the Eighth Circuit will be that a claimant is better off if he or she does not file an administrative charge, as long as one co-worker has. The use of the administrative process should be encouraged, rather than discouraged.

This new exception would also unwisely complicate class actions.

An important objective of class-action procedures is the promotion of efficiency and economy of litigation. *American Pipe*, 414 U.S. at 553-554. The procedures Respondent Anderson used in this action promoted efficiency and economy. He commenced a representative action and conducted discovery to identify the proper additional plaintiffs. The data he obtained showed that only some of the claimants who filed administrative charges were proper parties. Only these claimants, after review and approval by the district court, were then allowed to join.

The Court of Appeals' exception, unfortunately, would compel attorneys to hastily commence class actions and recruit every claimant who filed an administrative charge, regardless of what discovery might later show. Any weak claims thereby included could afterwards impair a clear focus on the evidence that established the more meritorious claims.

The Eighth Circuit's decision also ignores the Federal Rules of Civil Procedure.

Under Federal Rule of Civil Procedure 3, this action was commenced on February 10, 1992, when Respondent Anderson filed his pro se Complaint. The pro se Complaint alleged there was age discrimination by Petitioner against other older workers besides Respondent Anderson in the lay off and that Petitioner had engaged in a systematic pattern of age discrimination.

Under Federal Rules of Civil Procedure 4(m) and 15(c), Respondent Anderson's Amended Complaint, in which he first formerly indicated he was pursuing a representative action, relates back to the filing of the pro se Complaint.

Even if the new, 90 day ADEA statute of limitations applies to the claims of the non-Anderson/Nielsen Respondents, two of these Respondents still had viable claims on February 10, 1992. Respondents Wandersee's and Woods' EEOC dismissal letters were dated January 31, 1992.

Finally, the result of the Eighth Circuit's decision runs counter to everybody's initial expectation of what the applicable ADEA statue of limitations was, including Petitioner's. All of the dismissal letters from the EEOC stated the old 2 year / 3 year if willful periods applied. Petitioner argued that the old limitations periods applied when it opposed the class certification motion in December of 1992. The non-Anderson/Nielsen Respondents had a right to rely on the EEOC's representations, which did not contain any indication of uncertainty on the part of the EEOC as a result of the amendment, regardless of whether they were represented by an attorney.

Indeed, an attorney advising a client today could easily conclude that the 1991 amendment to the ADEA statute of limitations is not retroactive.

In *Landgraf v. USI Filing Products,* 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994) the Court issued a decision on the retroactivity of parts of the 1991 amendments to the Civil Rights Laws, though not the amendment to the ADEA limitations period.

Landgraf held that in deciding whether a statute is retroactive.

> the court must ask whether the new provision attaches new legal consequences to events completed before its enactment.
>
> (R)etroactivity is a matter on which judges tend to have "sound instinct(s)," * * * and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance.

CONCLUSION

The non-Anderson/Nielsen Respondents request, for the reasons above stated, that the Court grant their request for review and ultimately reverse the Eighth Circuit Court of Appeals decision that they cannot join the action Respondent Anderson commenced.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA FOURTH DIVISION FILED NOVEMBER 24, 1993

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL 4-92-138

Richard Anderson, Robert Eggan, Carl Englehorn, Norris Nielsen, Timothy Wandersee, Donald Woods, Peter Lowry,

Plaintiffs,

v.

UNISYS Corporation d/b/a Remington Rand Univac d/b/a Sperry Univac d/b/a Sperry d/b/a Unisys d/b/a Paramax Systems,

Defendant.

ORDER

Douglas P. Kempf, Kempf & Kempf, 7801 East Bush Lake Road, Suite 260, Bloomington, MN 55439-3112, for plaintiffs.

Thomas M. Sipkins, Joseph G. Schmitt, Popham, Haik, Schnobrich, & Kaufman, Ltd., 3300 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402, for defendant.

Plaintiffs have moved the Court to reconsider its order of October 20, 1993. Extensive briefs have been submitted in connection with the motion.

Appendix A

The Court has reviewed the briefs and has concluded that plaintiffs' motion for reconsideration should be in all things denied.

Accordingly, based on all the files, records and proceedings herein,

IT IS ORDERED that plaintiffs' motion for reconsideration is in all things denied.

s/ Harry H. MacLaughlin
Judge Harry H. MacLaughlin
United States District Court

DATED: November 24, 1993